

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

In the matter of the petition of

FIRELANDS MUSEUM OF
MILITARY HISTORY, INC.

for an exemption from §§ 91.319, 119.5(g),
and 119.25(b) of Title 14,
Code of Federal Regulations

Regulatory Docket No. FAA-2002-11969

DENIAL OF EXEMPTION

By letter dated March 26, 2002, Ms. Kathleen A. Yodice, Counsel to Firelands Museum of Military History, Inc. (FMOMH), Law Offices of Yodice Associates, 601 Pennsylvania Avenue NW, Suite 875, Washington, DC 20024, petitioned the Federal Aviation Administration (FAA) on behalf of FMOMH for an exemption from §§ 91.319, 119.5(g), and 119.25(b) of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would allow FMOMH to operate its former military Bell UH-1H Huey helicopters (UH-1H), which were issued experimental airworthiness certificates for the purpose of exhibition, to carry passengers on local flights for compensation or hire.

The petitioner requires relief from the following regulations:

Section 91.319(a) prescribes, in pertinent part, that no person may operate an aircraft that has an experimental certificate for other than the purpose for which the certificate was issued, or for carrying persons for compensation or hire.

Section 119.5(g) prescribes, in pertinent part, that no person may operate as a commercial operator without, or in violation of, an appropriate certificate and appropriate operations specifications.

Section 119.25(b) prescribes, in pertinent part, that each person who conducts rotorcraft operations for compensation or hire must comply with the certification and operations

specifications requirements of subpart C of part 119, and conduct its ondemand operations in accordance with the applicable requirements of 14 CFR part 135, and shall be issued operations specifications for those operations in accordance with those requirements.

The petitioner supports its request with the following information:

The petitioner states that FMOMH seeks a renewal of Exemption No. 6792, as amended (docket No. 29156), from §§ 91.319, 119.5(g), and 119.25(b), for the operation of its former military UH-1Hs. The petitioner states that each of FMOMH's UH-1Hs holds an experimental airworthiness certificate for the purpose of exhibition. The petitioner attaches FMOMH's operating limitations to its petition.

The petitioner states that FMOMH wishes to provide flights in its UH-1Hs to continue educating the public about the machinery that supported U.S. military personnel during World War II (WWII), the Korean War, and the Vietnam War. The petitioner adds that FMOMH has operated its UH-1Hs for more than 6 years without accident or incident. The petitioner also states that FMOMH plans to continue educating the general public on the UH-1H at various regional aviation and historical events. The petitioner adds, however, that FMOMH would like to allow its members to experience history through educational and memorable flights in exchange for a charitable donation. The petitioner notes that because Exemption No. 6792, as amended, has expired, FMOMH is no longer able to carry persons for compensation or hire in its UH-1Hs. The petitioner attaches a copy of Exemption No. 6792 to its petition.

The petitioner states that FMOMH operates a museum at the Huron County Airport. The petitioner adds that the museum is dedicated to educating the public about the machinery that supported U.S. military personnel in WWII, the Korean War, and the Vietnam War. The petitioner states that the museum attracts visitors from around the country. The petitioner further states that these visitors are able to experience history through FMOMH's use of static displays and actual flight.

The petitioner states that FMOMH's WWII display includes a Ford GPW Jeep, the DUKW amphibious vehicle, and the "White Scott Car," which was built locally in Cleveland, Ohio. The petitioner also states that FMOMH maintains an M-42 duster and a 4077th MASH M-171 ambulance in its Korean War display. The petitioner further states that FMOMH's Vietnam War display has a Bell AH-1 Cobra helicopter, a combat bunker, a Vietcong prisoner cage, and two UH-1Hs. The petitioner notes that one UH-1H is configured for combat operations and the other is outfitted as a medevac helicopter. The petitioner adds that both UH-1Hs were in service during the Vietnam War. The petitioner attaches the ownership and service histories of the UH-1Hs to its petition.

The petitioner states that Mr. Terry Willman wrote “AN EAGLES EYE VIEW—The Combat History of Army Helicopter Tail # 67-17658” after learning that UH-1H registration No. N658H, serial No. 67-17658, was still flying. The petitioner adds that this work recently was published. The petitioner notes that Mr. Willman was the crew chief of that UH-1H during the Vietnam War. The petitioner further states that many of the crewmembers who served on that UH-1H before it went down in combat in Vietnam have been located. The petitioner notes that to preserve history, FMOMH sells commemorative t-shirts depicting the UH-1H. The petitioner adds that the front of the shirt shows the UH-1H with its proper nose number and the back of the shirt shows a map of Vietnam that indicates all the battle stations to which the UH-1H was assigned.

The petitioner states that visitors may enter FMOMH’s various aircraft, vehicles, and other displays. The petitioner further states that FMOMH hopes to resume offering members an opportunity to fly to a “battlefield,” either adjacent to or on the airport property, by obtaining a renewal of Exemption No. 6792, as amended. The petitioner adds that members would then return to FMOMH by an M-60 tank or a UH-1H. The petitioner further states that FMOMH also plans to resume offsite flight experiences, such as at airshows. The petitioner notes that these types of flights will return to the point of departure.

The petitioner states that FMOMH petitioned the FAA for a grant of exemption from § 91.319 in 1998. The petitioner contends that the FAA recognized that the services provided by FMOMH were in the public interest. The petitioner notes that the FAA granted FMOMH’s request on July 1, 1998, by exempting its operations from §§ 91.319, 119.5(g), and 119.25(b). The petitioner further notes that FMOMH’s exemption expired July 31, 2000.

The petitioner states that before FMOMH was issued Exemption No. 6792, its UH-1Hs visited numerous regional aviation events. The petitioner also states, however, that under Exemption No. 6792, FMOMH’s UH-1Hs visited many more cities and gave hundreds of people a chance to experience an educational and historical flight aboard an authentic, veteran combat helicopter. The petitioner notes that the UH-1Hs have twice visited Kokomo, Indiana—the site of one of the largest Vietnam veteran reunions in the world. The petitioner also notes that the UH-1Hs have appeared at the Tyco Airshow in March 2000, the Vidalia Airshow in April 2000, and the Thomaston Airshow in May 2000. The petitioner states that more than 1,160 individuals experienced flight in a UH-1H at these three airshows. The petitioner further states that, in addition to airshows, FMOMH uses the UH-1Hs to support charities and public interest events. The petitioner states that the UH-1Hs supported the “Moving Wall” in Brandon, Florida, and Fort Lauderdale, Florida; the Melbourne, Florida, U.S. Army recruiting office; the FMOMH Make-A-Wish program; and numerous local scouting troops. The petitioner attaches to the petition a list of regional events FMOMH has attended.

The petitioner indicates that FMOMH operates its two UH-1Hs at a level that meets or exceeds military operating procedures. The petitioner adds that a select, highly experienced team conducts all operations. The petitioner further states that in the interest of safety, all flight operations are conducted under day visual flight rules conditions. The petitioner states that all of FMOMH's operations revolve around providing safe, educational experiences relating to U.S. military history. The petitioner further states that FMOMH developed and maintains a training program, an operations manual, and a maintenance and inspection program to ensure the highest level of safety. The petitioner adds that the training program and operations manual were developed to comply with the conditions and limitations in Exemption No. 6792, as amended, and the requests of the local flight standards district office (FSDO). The petitioner notes that the training program and operations manual detail the scope, mission, organization, and operation of FMOMH as well as its detailed flight operations, training, and safety programs. The petitioner argues that the maintenance and inspection program ensures the continued safe operations of the aircraft.

The petitioner contends that the public service FMOMH provides through military aircraft shows and other aviation shows is also an important aspect of its operation. The petitioner notes that FMOMH has displayed its UH-1Hs at three airshows and other local events around the country since its original grant of exemption. The petitioner states that the unmatched historic flight experience FMOMH offers its members also is an important aspect of its operation. The petitioner further states that FMOMH offers its members a short round-trip flight in one of its UH-1Hs in exchange for tax-deductible financial support. The petitioner notes that the financial support goes to the operation and maintenance of the museum and its exhibits, particularly the frequent and high-cost restoration, maintenance, and operation of the UH-1Hs.

The petitioner contends that the proposed exemption is in the public interest. The petitioner indicates that a grant of exemption would enable FMOMH to further operations under its Internal Revenue Code § 501(c)(3) status, while providing FMOMH's members with an opportunity to experience U.S. military history. The petitioner argues that civilian aircraft cannot replace the experience of flying in a UH-1H that actually operated during the Vietnam War.

The petitioner states that the financial support generated by the program would allow FMOMH to continue operation of its military history museum and its participation in aviation shows around the country and in local events. The petitioner adds that this provides the general public with an unmatched military and aviation history education. The petitioner states that misconceptions of the most influential and sometimes controversial military operations of the United States still exist. The petitioner contends that it is in the public interest to allow FMOMH to provide an opportunity to experience history in a way that cannot be experienced in any other fashion.

The petitioner states that FMOMH's operation of its UH-1Hs will not compete with air carriers, part 91 rotorcraft operators, or other aircraft operators whose aircraft have standard airworthiness certificates. The petitioner notes that the purpose of the short round trip flights for FMOMH members is not for transportation but for educational purposes. The petitioner further states that FMOMH seeks to continue providing unique opportunities to fly in an authentic former military helicopter while informing the public of U.S. military history. The petitioner notes that FMOMH does not intend to use its combat-equipped UH-1H to carry persons or property, but for educational member activities. The petitioner also notes that, likewise, the medevac UH-1H is not intended for actual emergency use.

The petitioner states that FMOMH recognizes the need to maintain an appropriate level of safety for the proposed operations. The petitioner notes that before FMOMH's original exemption was granted, it developed a manual of aviation facility standard operation procedures (SOP) to provide the highest level of safety appropriate for its operations. The petitioner indicates that the operational aspects of this manual were designed to meet or exceed military and civilian requirements and satisfy § 91.409. The petitioner further states that after operations were conducted under Exemption No. 6792, as amended, FMOMH revisited its SOP to ensure that it maintained the level of safety appropriate to its operations. The petitioner states that as a result of this continual review, FMOMH developed the training program and operations manual to replace the original SOP.

The petitioner contends that the training program and operations manual were developed to further enhance operations and the level of safety that persuaded the FAA to grant the original exemption. The petitioner states that FMOMH looked to its operating experience under the exemption in its effort to create the finest product. The petitioner also states that FMOMH sought input and recommendations about its training program and operations manual from its local FSDO. The petitioner further states that the Cleveland FSDO's cooperation allowed FMOMH to create a training program and operations manual with the highest quality and safety standards. The petitioner adds that FMOMH maintains these quality and safety standards by maintaining and updating the training program and operations manual as necessary to comply with Exemption No. 6792, as amended; all applicable airworthiness directives; 14 CFR; and local FSDO requests. The petitioner includes a copy of FMOMH's training program and operations manual with its petition. The petitioner adds that the Cleveland FSDO approved the training program and operations manual in December 2000.

The petitioner states that the operations manual describes FMOMH's key positions, such as curator, director of operations, chief pilot, director of maintenance, and pilot-in-command (PIC), and the requirements and responsibilities for each position. The petitioner notes that the operations manual details FMOMH's accident notification

and emergency notification procedures. The petitioner further notes that the operations manual describes FMOMH's mechanical irregularity reporting requirements, fueling procedures, emergency procedures, emergency evacuation assistance, passenger briefing details, and authorized sources from which to obtain accurate weather information, as well as the use of checklists, collision avoidance, and procedures for obtaining maintenance away from home base.

The petitioner indicates that with the assistance and input of the Cleveland FSDO, FMOMH created a detailed training program to enhance operational safety and to comply with the conditions and limitations of Exemption No. 6792, as amended, including programs for PIC crewmember initial and recurrent training. The petitioner notes that the training levels detailed include initial new-hire PIC; basic indoctrination; initial equipment; recurrent basic indoctrination; recurrent aircraft PIC; requalification PIC; general emergency; aircraft ground and initial and transition instructor check airman. The petitioner adds that the programs also discuss qualification requirements, crew chief duties and responsibilities, recordkeeping requirements, as well as forms for recording airman competency and proficiency, training records, pilot duty assignments, single-line entries, instructor and check airman, daily flight and duty log, annual flight and duty log, initial operating experience, and a pilot annual resume. The petitioner states that FMOMH continues to use the U.S. Army's Aircrew Training Program Commander's Guide to Individual and Crew Standardization, Training Circular (TC) No. 1-210, to ensure the optimum level of safety is achieved and maintained through crewmember training. The petitioner attaches a copy of TC 1-210 to its petition.

The petitioner states that FMOMH conducts operations in accordance with the U.S. Army's Operator's Manual for Army Model UH-1H/V Helicopters, Technical Manual (TM) 55-1520-210-10. The petitioner attaches a copy of TM 55-1520-210-10 to its petition. The petitioner states that FMOMH always carries TM 55-1520-210-10 aboard its aircraft. The petitioner further states that FMOMH's maintenance program is identical to the U.S. Army's maintenance program described in TM 55-1520-210-10. The petitioner notes that FMOMH periodically reviews the U.S. Army's inspection program for changes, which it then incorporates into its manuals and operations.

The petitioner states that FMOMH maintains its UH-1Hs according to 14 CFR, and each UH-1H undergoes an FAA-approved 150-hour or annual inspection, whichever comes first, to provide a level of safety equivalent to the regulations. The petitioner adds that the UH-1Hs also undergo regular oil analysis. The petitioner states that the engine oil samples are analyzed at 12.5-hour intervals and all other oil reservoirs undergo oil sample analysis at 25-hour intervals. The petitioner indicates that FMOMH

reviews all its time-controlled and life-limited components. The petitioner adds that FMOMH performs all special inspections for short-term storage, low operating hours, corrosion, and hard landings, as necessary. The petitioner attaches FMOMH's annual inspection program to its petition.

The petitioner states that all of FMOMH's flight operations are conducted by certified pilots who maintain second-class medical certificates and commercial pilot certificates. The petitioner adds that all FMOMH crewmembers are highly experienced and many of them acquired their training in the military. The petitioner states that FMOMH maintains crewmember records to ensure all training, safety, and currency requirements are conducted according to its training program. The petitioner states that FMOMH immediately suspends any crewmember who it finds to be in nonconformance with the policies set forth in its manuals.

The petitioner argues that FMOMH has shown, in this petition and in its operations, that a grant of exemption is in the public interest. The petitioner contends that the educational experience FMOMH offers to its members and the general public is invaluable and irreplaceable. The petitioner states that if the FAA allows FMOMH to offer flights to its members in its UH-1Hs, then FMOMH would continue to be able to raise funds that ensure the existence of the museum, its historical displays, the restoration and maintenance of its historic aircraft, and its airshow participation.

The petitioner states that FMOMH's excellent safety record demonstrates that the equivalent level of safety required by 14 CFR is not an issue. The petitioner states that FMOMH's self-imposed safety measures specifically demonstrate its commitment to the safety of its staff and the public. The petitioner further states that FMOMH's commitment is further evidenced by its routine review of U.S. Army procedures and incorporation of new components into FMOMH's manuals, as well as its emphasis on recurrent training for its crewmembers. The petitioner contends that the high experience level of FMOMH's crewmembers further supports its commitment to safety and is a key element in the safety considerations relevant to granting the proposed exemption.

The FAA has determined that good cause exists for waiving the requirement for Federal Register publication because the exemption, if granted, would not set a precedent and any delay in acting on this petition would be detrimental to FMOMH.

The FAA's analysis is as follows:

The FAA has considered the petitioner's supporting information and finds that a grant of exemption is not in the public interest and could adversely affect safety.

Since granting the exemption, the FAA has conducted a number of inspections of FMOMH's operations. These inspections revealed several areas in which FMOMH's operations were unsatisfactory. On May 23, 2000, the FAA's Flight Standards District Office (FSDO) in Cleveland, Ohio, conducted a reinspection of FMOMH's operations. The Cleveland FSDO has already provided the specific findings of this re-inspection to FMOMH. The re-inspection found FMOMH operations to be unsatisfactory in the following areas:

- Operational record keeping
- Administering of its training program
- Maintaining records of its training
- Safety reporting

Additionally, the re-inspection revealed that FMOMH had not complied with many of the conditions and limitations of Exemption No. 6792. The FAA found that continued use of Exemption No. 6792, as amended, was not warranted, because FMOMH failed to meet the conditions and limitations of the exemption. The FAA did not rescind Exemption No. 6792, as amended, because it was to expire on July 31, 2000, and FMOMH did not petition for an extension or amendment.

Aviation history can be represented via static display in the same way historic landmarks may be represented in a museum or via live demonstration. The FAA has found a public interest in having certain former military aircraft continue to fly to further or maintain U.S. aviation history. However, the FAA finds it must balance that interest with the FAA's primary duty to support the public interest in setting the appropriate aviation safety standards, especially for aircraft operations involving paying passengers. Therefore, the FAA recently re-examined the criteria it would use to determine whether to grant exemptions to the operators of vintage military aircraft to allow for the carriage of paying passengers. Specifically, the FAA evaluates whether or not (1) a flight in the same or similar aircraft can be performed in full compliance with FAA regulations; (2) there is an overriding public interest in having the aircraft continue to be flown and, therefore, a need to raise funds from a good source such as paying passengers; (3) measures can be taken to establish an appropriate level of safety for the flights involving paying passengers; and (4) FAA oversight of the operation would not drain scarce FAA inspector resources so as to compromise the public's interest in adequate FAA oversight of other aircraft operations.

The FAA must consider the public interest in preserving "flyable" U.S. aviation history through the use of passenger-paid rides against the public interest in ensuring an appropriate level of safety for those paying passengers. Thus, the FAA has adopted the following policy with regard to exemptions from 14 CFR to operate (1) experimental category airplanes certificated under the provisions of § 21.191(d) for exhibition purposes, or (2) limited category airplanes (§ 21.189) for the purpose of carrying

persons for compensation on local educational or nostalgia flights. The policy applies to aircraft that have been issued a special airworthiness certificate which are otherwise not eligible to be used for the carriage of persons or property for hire. The aircraft that is subject of the exemption must meet the following criteria:

- (1) be a former, U.S. military, WWII or earlier vintage airplanes;
- (2) be piston-powered;
- (3) be either designed as a crew-served airplane or multiple-seat airplane with more than one pilot seat; or
- (4) be a replica of the vintage that is so unique as to warrant further consideration; and
- (5) have been manufactured on or before December 31, 1947.

In addition, special training equipment such as simulators or ejection seat training devices must not be necessary for the flight crew or passengers.

The UH-1Hs owned currently by FMOMH have experimental airworthiness certificates. The certificates were issued consistent with 14 CFR § 21.191(d) to allow exhibiting the UH-1Hs' flight capabilities, performance, or unusual characteristics at airshows, in motion pictures, on television, and in similar productions, and for the maintenance of exhibition flight proficiency, including flying to and from these events. Under FAA Order 8130.2D, Airworthiness Certification of Aircraft and Related Products, aircraft issued a special airworthiness certificate in the experimental category for the purpose of exhibition are listed in one of four groups: (1) group I, performance competition aircraft; (2) group II, turbine-powered aircraft; (3) group III, piston-powered: historic military, vintage, replica, and unique aircraft; or (4) group IV, other aircraft. FMOMH's UH-1Hs are group IV Vietnam-era aircraft manufactured after 1947.

When the FAA granted relief to operators of U.S.-manufactured, WWII vintage military aircraft that hold limited or experimental airworthiness certificates, the FAA recognized that the only way for a person to experience the flight characteristics of these aircraft is to be able to fly in the actual aircraft. The FAA found that no aircraft holding standard airworthiness certificates could replicate the experience. However, the FAA states that if it determined that a flight operation could be accomplished by an aircraft that holds a standard airworthiness certificate, there would have been no overarching reason to grant an exemption and it denied the request. The FAA finds that the petitioner has proposed an operation in an aircraft with an experimental airworthiness certificate that could be accomplished in an aircraft with a standard airworthiness certificate. The FAA also believes that the civil version of a UH-1H (the Bell 204), issued a standard airworthiness certificate, is practically indistinguishable to the average person, from the military version of the helicopter, much the same as the military and civil version of the Douglas DC-3 and C-47.

Therefore, the FAA finds that FMOMH's UH-1Hs it intends to use under the proposed exemption do not meet the criteria to warrant a grant of exemption because of their vintage, type of powerplant, and date of manufacture. The FAA also finds that because of FMOMH's unsatisfactory operations and failure to comply with the conditions and limitations of Exemption No. 6792, as amended, and the availability of aircraft with standard airworthiness certificates that can provide the same flight experience as FMOMH's UH-1Hs, an exemption is not warranted and the petitioner's request is denied.

In consideration of the foregoing, I find that a grant of exemption would not be in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701 delegated to me by the Administrator, the petition of Firelands Museum of Military History, Inc., for an exemption from 14 CFR §§ 91.319(a), 119.5(g), and 119.25(b) is hereby denied.

Please note that in an effort to allow the public to participate in tracking the FAA's rulemaking activities, we have transitioned to the Department of Transportation's online Docket Management System (DMS) at <http://dms.dot.gov>. This new docket system enables interested persons to submit requests to, view requests on, and download requests from the DMS to comply with 14 CFR § 11.63. Please submit future requests through the DMS.

Issued in Washington, DC, on March 11, 2004.

/s/

John M. Allen

Acting Director, Flight Standards Service